PRESENTATION

BY THE

CANADIAN LABOUR CONGRESS

TO THE

SPECIAL JOINT COMMITTEE

ON THE

1987 CONSTITUTIONAL ACCORD

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INTRODUCTION

The Canadian Labour Congress is in basic disagreement with the process which is being followed in amending Canada's Constitution.

The Constitution of any country is the basic law of the land. It establishes our national institutions, their powers, responsibilities and procedures as well as the relationships between and among them. Additionally, and more importantly, the Constitution is a pact between the citizens and their government. It is an agreement between the sovereign right of a country's citizens to determine basic rights and freedoms and the limits to the exercise of that power by governments.

One difference between a democracy and a totalitarian state is that their limits are determined by the citizens -- not the representatives of the state. There is always a danger in drawing this type of an analogy and carrying it too far, but the major authoritarian elements are present in this process. For example, these hearings do not allow for anything more than technical amendments while the process itself was conducted in secrecy with no input from other than elected politicians and senior bureaucrats.

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Public participation has been intentionally excluded in every meaningful way. What the politicians are really saying to the people of Canada is that we really know what is best for you. At its worst this is authoritarian and at its best highly paternalistic. We would therefore recommend to this Committee that this process be stopped and the people of Canada consulted prior to any Constitutional amendments. It might just be that there is basic public agreement on Canada's present Constitution. We have certainly not heard any hue and cry for wholesale amendments coming from anywhere but the Mulroney government.

The haste in which these public hearings have been convened is also highly questionable. Most Canadians are on vacation during August and the major national institutions have a great deal of difficulty in meeting this kind of a timetable. Again, we suspect this is deliberate on the part of the government to slip these hearings through as quickly and unobtrusively as possible to thwart any national momentum to oppose the Accord.

.../3

On this question of opposition to the Accord the Quebec Federation of Labour and the Canadian Labour Congress oppose it for very different reasons. Again, when it comes to the fundamental law of the land this is to be expected. As a Congress we will always support the right of our Quebec Federation to take its own independent position on such issues. This is in keeping with our primary position that the people must be heard before constitutional change is brought about.

In this presentation the Congress will limit its comments to the following major areas:

- The Spending Power and National Programmes
- Amending Procedures
- Meech Lake Accord and the Equality Provisions of the Charter
- Judiciary

THE SPENDING POWER AND NATIONAL PROGRAMMES

The federal spending power has been one of the creative and major levers of provincial/federal dynamics. It is a highly flexible power if used judiciously for responding to the need for national programmes -- notably in the fields of medicare, skills training and post-secondary education and child care. The Accord in our view seriously compromises this dynamic by enabling any province to opt out of shared cost programmes with compensation, provided that the province carries on **"a program or initiative that is compatible with the national objectives"**.

.../4

This phrase **"compatible with national objectives"** is most ambiguous. What criteria do we use to determine whether a programme meets **"national objectives"**? And how does one determine its compatibility? There is no question that these are issues which eventually will be determined by references to the Supreme Court. What this means in reality is that an unelected judiciary will rule on the final determination of our social security policies; employment policies; child care policies, environmental policies, etc. etc.. Where in the past the public could hold its elected representatives accountable, the politicians can now evade any such responsibility because it is a matter for the courts. This is a dereliction **of** duty and a fatal flaw in the Accord.

Furthermore, it is a politically expedient arrangement for the provinces to have the federal government levy the taxes but they get to determine how it is to be spent so long as the courts agree. What ever happened to the federal government's voice in these matters?

The Courts cannot determine what are fundamentally political choices that every society makes. The give and take and the public debate should not be blunted by these choices being a matter for the Courts.

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Before we entrench the federal spending powers in the Constitution we had better have a much clearer idea on the implications for national programmes. The ambiguity of the wording and conflicting opinions of the **"constitutional experts"** is a clear indication that we do not know what the long term result will be.

AMENDING PROCEDURES

The Canadian Labour Congress is in fundamental disagreement with the change to the general amending formula from the 1982 Constitution requiring 7 provinces with 50% of the population, to the present proposal requiring unanimous provincial consent. In reality, a veto for every province which almost certainly condemns any future possibility for constitutional change.

The impact of this amending formula is tantamount to condemning the Yukon and Northwest Territories to their present status in perpetuity.

Had this provision been in the BNA Act, Canada would not exist today for it is highly likely that Ontario would have vetoed Manitoba's entry in 1870; Quebec and Manitoba would have vetoed Alberta and Saskatchewan in 1905; and Quebec would have vetoed Newfoundland in 1949 if it was not given Labrador.

.../6

Furthermore, because social programmes such as the unemployment insurance programme and old age pensions required a shift in the division of powers, Canadians would not be enjoying these programmes today if this amending formula had been in force.

The Rowell/Sirois Report of 1939, which called for a national system of unemployment insurance because unemployment at that time constituted a **"national emergency"** could not have been implemented under the new amending formula.

If a future **"national emergency"** comes along all Canadians will pay a heavy price because the basic law of the land will be incapable of meeting the challenge.

This same general amending formula effectively bars our aboriginal peoples from ever achieving their rightful goals of self-determination without federal/provincial unanimity.

As a Congress representing more than 2.2 million Canadians we see too many negatives in this general amending formula for us to accept. It is a constitutional straight jacket. At least the present amending formula allows for future constitutional change.

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MEECH LAKE ACCORD AND THE EQUALITY PROVISIONS OF THE CHARTER

The Accord is silent in recognizing the rights of women and minorities. Again, the Accord suffers from the haste in which it was negotiated so that there is a grave risk that the equality provisions of the Charter will be undermined by the Accord.

The Canadian Labour Congress is in full agreement with those women's organizations which have appeared and which have called for amendments to Clause 16, particularly in relation to Quebec as a **"distinct society"** if a conflict should arise between the equality provisions of the Charter and the **"distinct society"** provision.

We do not want the march to greater equality between the sexes aborted by faulty drafting or outright omission.

JUDICIARY

The Supreme Court of Canada is a critical national institution. At the moment these appointments are the prerogative of the federal government. The proposals in the Accord, which would limit future appointments to lists put forward by the provinces, will, in the longer term, make the Supreme Court a defender of provincial rights to the detriment of the federal powers. It is inconceivable to the Canadian Labour Congress that such a fracturing of the highest court in the land could ever be put forward as a serious proposal.

.../8

CONCLUSIONS

The Meech Lake Accord, in our view, clearly represents a devolution of powers from the federal government to the provincial governments. This is a dangerous development in a country which is characterized by great regional differences, mass distances and a decentralized federal system.

Neither the Premiers nor the Prime Minister has a mandate to negotiate such a constitutional agreement as the Meech Lake Accord. The people of Canada have been effectively excluded from meaningful input into what is the most basic law of the land.

The Canadian Labour Congress is opposed to the Meech Lake Accord both in the process being followed and in its basic thrust as outlined above.

It is not a matter of tinkering with amendments; rather it is a matter of deciding what kind of country we want Canada to be before we take the leap into the abyss. The Accord does not contain the seeds of the Canadian Labour Congress' vision of Canada. We do not want a "community of communities".

Respectfully submitted on behalf of the

CANADIAN LABOUR CONGRESS

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